

COHEN &

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Plaintiff's request for a stay of this action is denied.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 17.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
December 13, 2021

VIA ECF

Honorable Philip M. Halpern
United States District Judge
United States District Court
Southern District of New York
300 Quarropas St., Rm. 530
White Plains, New York 10601

Re: ***Santos v. The United States of America, et al. – 21 Civ. 8009***

Dear Judge Halpern,

I represent the plaintiff in the above-mentioned action. I write today to request a stay of this action. The reason for this request is that criminal charges are still pending against the plaintiff in *USA v. Santos, 21-CR-00545 (PAE)*. Counsel for both defendants consent to this stay.

By way of background, plaintiff alleges, in sum, that on or about October 28, 2020, he was unarmed and lawfully present in the vicinity of 425 East Route 59, Nanuet, NY 10954 (the DoubleTree Hotel), when currently unidentified law enforcement officers from either the FBI, DEA, ATF and/or the NYPD chased him towards the hotel lobby entrance and then opened fire at him and shot him multiple times as he fled. As a result of the foregoing, plaintiff was in a coma for approximately three (3) weeks and suffered serious bodily injuries, which required multiple surgeries and ongoing medical treatment.

Following plaintiff's apprehension on October 28, 2020, plaintiff was arraigned on or about November 17, 2020, before the Honorable Magistrate Judge Fox (20-mg-11564) and charged with criminal offenses. This criminal case against plaintiff currently remains ongoing before the Honorable Judge Paul A. Engelmayer under 21-CR-00545 (PAE). Likewise, at a meet and confer held on December 7, 2021, and during a subsequent exchange of e-mails, the parties agreed to stay these civil proceedings while plaintiff's criminal case is pending.¹ To that end, counsel for defendant City of New York further advised that he would consent to the stay, as long as plaintiff's counsel agreed to file a status letter in this matter every thirty (30) days to keep all parties apprised as to the status of the criminal matter, which plaintiff is amenable to.

¹ Plaintiff proposed, and is agreeable to the stay, but reserves the right to file a letter(s) in the future requesting permission to temporarily lift the stay to file an Amended Complaint(s), to the extent necessary if the criminal matter remains ongoing, in order to comply with any applicable statute of limitations.

“The power to stay a civil proceeding by reason of a pending criminal proceeding is within a court's inherent discretionary power.” Citibank, N.A. v. Hakim, 1993 WL 481335, at *1 (S.D.N.Y. Nov. 18, 1993); see e.g. Estes-El v. Long Island Jewish Med. Ctr., 916 F.Supp. 268, 269–70 (S.D.N.Y.1995) (Kaplan, D.J. & Peck, M.J.) (staying a § 1983 action until resolution of a parallel state criminal action).

Likewise, where, as here, all parties consent to a stay while plaintiff’s criminal matter is pending, with the understanding that plaintiff agrees to file a status letter every thirty (30) days keeping the parties apprised of the status of his criminal matter, plaintiff respectfully requests that Your Honor exercise his discretionary power and grant said requested relief.

Thank you for your time and consideration of this request.

Very truly yours,

/S

Ilyssa S. Fuchs, Esq.

CC:

David E. Farber, US Attorney’s Office for the SDNY *by ECF*
Christopher Arko, City of New York *by ECF*